IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.5657 of 2006
Date of Decision : November 03, 2006.

Vinod Kumar Khosla ..... Petitioner

Vs.

Madan Gopal Punj ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Sumeet Goel, Advocate
for the petitioner.

Mr.R.P.Bali, Advocate
for the respondent.

* * *

P.S.Patwalia, J. :

The tenant has filed the present revision petition aggrieved against the order passed by the Rent Controller, Chandigarh allowing a petition filed by the respondent-landlord under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 and directing the petitioner-tenant to hand over the vacant possession of the demises premises to the landlord within a period of two months from the date of order.

The landlord filed a petition stating that Shri Kanshi Ram Punj, his late father was owner of the house in dispute. Both parents of the

landlord had died long back. Father of the landlord had executed registered Will dated 16.10.1985 by virtue of which the full Ground Floor, half portion of the First Floor and half portion of the Second Floor devolved upon the petitioner. The remaining portion of the house devolved upon his brother Shri Krishan Gopal. The house is a ten marla house bearing No.3400 located in Sector 27-D, Chandigarh. The father of the petitioner during his lifetime had inducted the petitioner as a tenant in half portion of the Ground Floor enumerated as drawing room, dining room, kitchen with common user of rear verandah, latrine and bathroom as well as gallery and passage provided between the two portions of the house in question vide agreement dated 1.6.1999 at the rent of Rs.1114/- per month excluding water and electricity charges.

The landlord further averred that he was working as a Draftsman Grade-I under the Garrison Engineer, MES, Chandigarh and had retired from service with effect from 31.3.2001. He stated that he also owned one single storied residential house of 10 marlas being House No.115, Sector 16, Panchkula. He is at present residing in that house with his two married sons and their families. It has come in the affidavit filed by the landlord that both his sons who are married, had also been blessed with children. He stated that after his retirement he wanted to occupy the entire Ground Floor of his house in Chandigarh along with his younger son and his family so as to enable the elder son to occupy and reside independently in the house at Panchkula along with his family. He stated that three families living in a single storey of 10 marla house is very cramping and uncomfortable. The accommodation was totally inconvenient and inadequate. He therefore requested the tenant to vacate the premises as he intended to occupy the same himself. However the tenant did not do so. It

is therefore that he filed the petition under Section 13-A of the Act.

Upon notice the tenant appeared and filed a written statement taking objections that there did not exist any relationship of landlord and tenant between the parties. The house had been taken on rent from Shri Kanshi Ram Punj, father of the landlord. It was further stated that the landlord was already in use and occupation of House No.115, Sector 16, Panchkula for the last more than 15 years and therefore had no requirement of the house at Chandigarh. It was stated that the petition had been filed with mala fide intention and ulterior motive.

The learned Rent Controller found that there existed a relationship of landlord and tenant between the parties. The Will executed by the father was duly proved on the record. The relevant observations of the Rent Controller on this issue are as hereunder :-

> *"That it is admitted case of the parties that previously Sh.Kanshi Ram Punj father of petitioner Madan Gopal was owner/landlord of the demised premises and had rented out the demised premises. The death of petitioner's father namely Sh.Kanshi Ram Punj is not disputed. Petitioner claimed that he is receiving rent and relied upon Ex.P5 which is a cheque dated 30.4.2002 of Rs.1114/-. A perusal of the same reveals that the same is in the name of Madan Gopal Punj. Respondent Vinod Kumar while appeared before court as DW 1, in his cross examination admitted that I have seen the cheque Ex.P5 which bears his signatures. Respondent*

also admitted in his cross examination that at the time of kirya of Sh.Kanshi Ram Punj the petitioner had in the presence of 2/3 persons told him that he should make payment of rent to Sh.Neeraj Punj. Once respondent issued a cheque in favour of petitioner then he admitted him as his landlord. In view of above said discussion it is proved that there exists a relationship of landlord & tenant between the parties. Therefore, this issue is decided accordingly in favour of petitioner and against respondent."

On merits the learned Rent Controller found that Section 13-A gives a right to specified landlord to recover immediate possession of a residential building within one year of the date of his retirement if he applies for the same to the Rent Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and files an affidavit that he does not own or possess any other suitable accommodation in the local area in which he intends to reside and that he wants the possession of the house for his own use and occupation.

On the aforesaid the Rent Controller firstly finds as hereunder :-

"There is no dispute that application under Section 13-A of the Act was filed within time. Petitioner has filed the present petition on 26.3.2002 and as per Ex.P4 petitioner was retired on 31-3-2001. Petitioner has also attached an affidavit along with petition mentioning therein that he did not own and possess any other suitable

> *accommodation in the area of Chandigarh in which he intends to reside after his retirement."*

and thereafter records as hereunder :-

> *"In view of the above said discussion it is amply proved that petitioner is specified landlord. As per Ex.P4 he was retired on 31.3.2001. The factum of retirement of the petitioner has gone unrebutted. The respondent has not been able to show that Ex.P4 is not correct in any manner whatsoever. It is also proved that petitioner is not in the ownership or possession of any other building in Chandigarh. Thus, he fulfills all the ingredients as envisaged under Section 13-A. Therefore, this issue is decided accordingly in favour of petitioner and against respondent."*

It is on the aforesaid findings that the petition filed under Section 13-A of the Act by the landlord was allowed. Learned counsel for the petitioner has firstly contended that the Rent Controller has not adjudicated upon the issue as to whether the accommodation in possession of the landlord was adequate or not. I am of the opinion that the provisions of Section 13-A are clear that once the conditions specified therein are satisfied the specified landlord is entitled to possession of the residential house. The three conditions are that the application should be moved within one year of retirement, the applicant should enclose a certificate from the competent authority indicating the date of retirement and that the landlord should file an affidavit that he does not own and possess any other suitable accommodation in the local area in which he intends to reside and where the

property is situated. In the present case all the three conditions are satisfied. Apart from this the facts of this case would show that the landlord has a large family comprising two sons who are both married and further have children. The whole family is cramped in a single storey 10 marla house in Panchkula. The landlord desires to have his residence in his house at Chandigarh on the Ground Floor. However he has only a portion of the Ground Floor with him. Thus he is entitled to claim the remaining portion as well. I therefore find no merit in the first contention raised by the learned counsel for the petitioner.

Learned counsel for the petitioner thereafter contends that the provisions of Section 13-A are not meant to settle the family of the specified landlord and therefore in view of the stand of the landlord in the present case, the petition should have been rejected. I find no merit in this contention as well. The landlord has clearly stated that he needs the house for himself to reside on the Ground Floor. Even if he has further stated that in the process he would also be settling his sons, it would not detract from the basic plea set up by the landlord that he needs the premises for his own residence. Thus I find no merit in this contention as well. In this situation learned counsel for the petitioner then argued that even the relationship of landlord and tenant was disputed in this case as the Will produced on the record had not been probated. Firstly a reading of the order of the Rent Controller would show that no such contention was raised before him. Secondly the Will has been produced on the record. There is no controversy that in terms of the Will the property has devolved upon the landlord. Thus the fact that the Will has not been probated would not be relevant for the purpose of the present proceedings in the facts and circumstances of this case. I therefore find no merit in this contention raised by the learned

counsel for the petitioner as well.

For the reasons aforementioned I find no merit in this revision petition and the same is accordingly dismissed. However the petitioner tenant is given six weeks' time to hand over the vacant possession of the premises to the landlord.

November 03, 2006 (P.S.Patwalia)
monika Judge